

Message Text

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ACTION NEA-10

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TO SECSTATE WASHDC 8170

INFO AMEMBASSY COLOMBO

AMEMBASSY DACCA

AMEMBASSY ISLAMABAD

AMEMBASSY KATHMANDU

AMEMBASSY LONDON

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

C O N F I D E N T I A L NEW DELHI 13054

E.O. 11652: GDS

TAGS: PINT, IN

SUBJECT: CONSTITUTIONAL AMENDMENT BILL: SOME FURTHER THOUGHTS

REF: NEW DELHI 12906

1. AFTER SEVERAL WEEKS OF HESITATION AND INDECISION, MRS. GANDHI SEEMS TO HAVE MADE UP HER MIND TO PUSH FORWARD WITH THE AMENDMENTS TO THE CONSTITUTION SHORTLY AFTER HER RETURN FROM THE COLOMBO NAC* DURING JULY AND AUGUST SHE HAD BEEN RECEIVING OBJECTIONS FROM MP'S ON VARIOUS ASPECTS OF THE SWARAN SINGH COMMITTEE RECOMMENDATIONS. HER DECISION WAS TO OVERRULE THESE OBJECTIONS AND ORDER THE DRAFTING OF AN AMENDMENT BILL THAT WENT SIGNIFICANTLY BEYOND THE PROPOSALS OF THE SWARAN SINGH PANEL IN SEVERAL IMPORTANT RESPECTS. THE INCLUDE:

(A) THE UNAMBIGUOUS SUBORDINATION OF THE PRESIDENT TO THE
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PRIME MINISTER. IN SOME OF OUR PREVIOUS REPORTING, WE

NOTED THE RUMORED CONFLICTS BETWEEN MRS. GANDHI AND PRESIDENT AHMED. IN ORDER TO RESOLVE THIS CRUCIAL ISSUE OF WHO IS IN CHARGE, THE SWARN SINGH COMMITTEE AT ONE POINT SUGGESTED AN AMENDMENT THAT WOULD HAVE TRANSFERRED THE POWER TO ALLOCATE MINISTERIAL PORTFOLIOS FROM THE PRESIDENT TO THE PRIME MINISTER. APPARENTLY, MRS. GANDHI CONCLUDED THIS WAS ONLY A PARTIAL MEASURE AND DIRECTED THAT ARTICLE 74 BE REWRITTEN SO AS TO LEAVE NO DOUBT THAT THE PRESIDENT "SHALL ACT IN ACCORDANCE WITH" THE PRIME MINISTER'S ADVICE. FOLLOWING THE 1971 24TH AMENDMENT INJUNCTION THAT THE PRESIDENT "SHALL" APPROVAL ANY AMENDMENTS PASSED BY PARLIAMENT, MRS. GANDHI HAS VIRTUALLY COMPLETED THE FORMALIZATION OF THE IMPOTENCY OF THE PRESIDENT IN LAW RATHER THAN DEPENDING MERELY ON CUSTOM.

(B) POWERS TO PROHIBIT "ANTI"NATIONAL ASSOCIATIONS": THE NEW ARTICLE 31D NOT ONLY GIVES PARLIAMENT THE EXCLUSIVE AUTHORITY TO BAN "ANTI-NATIOAL" GROUPS AND TO "PREVENT ANTI-NATIONAL ACTIVITIES," BUT ALSO SPECIFIES THAT ANY ALREADY EXISTING LAWS IN THIS AREA "SHALL CONTINUE IN FORCE UNTIL ALTERED OR REPEALED OR AMENDED BY PARLIAMENT." THIS COULD BE INTERPRETED BY THE GOI TO MEAN THAT ALL OF THE SPECIAL MEASURES NOW IN EFFECT AS A RESULT OF THE EMERGENCY (SPECIFICALLY THE GOVERNMENT'S ALMOST UNLIMITED AUTHORITARIAN POWERS GRANTED BY MISA AND THE DIR) CAN NOW BE CODIFIED UNDER THE AUTHORITY OF THE CONSTITUTION. IN EFFECT, THE EMERGENCY ITSELF COULD BE LIFTED ONCE THE AMENDMENT BILL IS PASSED, AND THE CENTER'S AUTHORITY TO IMPOSE CENSORSHIP, TO ARREST SO-CALLED "ECONOMIC OFFENDERS" AND "ANTI-SOCIAL ELEMENTS," AND, IN PARTICULAR, TO BAN SUCH GROUPS AS THE RSS AND ANAND MARG (WHICH IS NOW JUSTIFIED BY THE DIR) WILL HAVE BECOME INSTITUTIONALIZED AS A PERMANENT PART OF THE LAW OF THE LAND.

(C) CATCH 22: THE FINAL CLAUSE OF THE BILL GIVES A TWO-YEAR BLANKET AUTHORITY TO THE PRESIDENT, I.E. THE PRIME MINISTER, TO TAKE WHATEVER STEPS MAY BE NECESSARY, "INCLUDING ANY ADAPTATION OR MODIFICATION OF ANYPROVISION OF THE CONSTITUTION", IN ORDER TO REMOVE ANY "DIFFICULTY" WHICH MAY ARISE IN THE IMPLEMENTATION OF THE NEW AMENDMENTS. SUCH ACTIONS WOULD NOT REQUIRE PARLIAMENTARY ASSENT, MERELY NOTIFICATION. SINCE THE PRSIDENT IS SUBORDINATED TO THE

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PRIME MINISTER, THIS CLAUSE APPEARS TO GIVE MRS. GANDHI VIRTUALLY UNLIMITED AUTHORITY TO MANIPULATE THE CONSTITUTION AS SHE WISHES IN THE NEXT TWO YEARS. AS ONE EUROPEAN DIPLOMAT SUMMED IT UP: "SHE SEEMS TO HAVE GOTTEN IT ALL WRAPPED UP IN ONE NICE PACKAGE, HASN'T SHE."

2.CONCERNED THOUGH MANY MP'S WERE EVEN BY THE EARLIER PROPOSED AMANEMDMENTS, THE SWEEPING NATURE OF THE CHANGES

ACTUALLY PUT FORWARD SEEM TO HAVE CAUGHT EVEN SOME OF THESE UNAWARES. TO THE DEGREE THAT THEY CONCENTRATE UNPRECEDENTED POWERS IN THE HANDS OF THE EXECUTIVE, THEY GO FAR BEYOND ANYTHING MOOTED BY THE SWARAN SING COMMITTEE. MRS. GANDHI HAS ONCE AGAIN REGAINED THE UPPER HAND AFTER WEEKS OF INDECISION BY A SUDDEN JUMP AHEAD OF HER CRITICS. THE EFFECT OF THESE CHANGES WILL HAVE A NUMBING EFFECT ON THOSE MP'S WHO MIGHT HAVE CONTEMPLATED WAVERING FROM THE STRICT PARTY LINE. WHATEVER EXPECTATIONS THEY MIGHT HAVE HAD OF SOME BOLD MOVE BY THE PRESIDENT WILL HAVE BEEN DASHED ONCE THE 44TH AMENDMENT HAS BEEN PASSED. THE PRESIDENT WILL HAVE TO CONCUR IN THE EMASCULATION OF HS OWN IMPUTED POWERS.

3. AS DID THE SUDDEN ANNOUNCEMENT OF THE EMERGENCY ITSELF, THE PASSAGE OF THE 44TH AMENDMENT WILL SERVE TO STRENGTHEN THE FENCES AROUND MRS. GANDHI'S PERSONAL GRIP ON POWER. BUT THIS WILL ADD NO WEIGHT TO EITHER THE ORGANIZATIONAL ABILITY OF THE CONGRESS PARTY OR THE GOVERNMENT ITSELF TO IMPLEMENT AND MOTIVATE SOCIAL AND ECONOMIC CHANGE. THE AMENDMENT MAY FURTHER COW OPPOSITION WITHIN THE CONGRESS, OR IT MAY STIMULATE GREATER CLANDESTINE RESISTANCE WHICH THE GOVERNMENT WILL HAVE GREATER POWERS THAN EVER TO SUPPRESS. IT MAY PROMPT MRS. GANDHI TO TAKE A CHANCE ON ELECTIONS NEXT YEAR AFTER ALL WITH CONFIDENCE THAT HER NEW CONSTITUTIONAL POWERS WILL ENABLE HER TO CONTROL WHO CONTESTS AGAINST HER, WHAT THEY SAY, HOW THEY COLLECT FUNDS, AND THE DEGREE OF PUBLICITY THEY RECEIVE. OR IT MAY LEAD HER TO POSTPONE ELECTIONS FOR YET A FURTHER PERIOD ON THE GROUNDS THAT FURTHER TIME IS NECESSARY FOR EVERYONE TO BECOME ACCUSTOMED TO HOW THE NEW PROVISIONS OF THE CONSTITUTION WILL EFFECT PUBLIC AND POLITICAL LIFE. MP'S AND OTHER POLITICIANS ARE FRANK TO ACKNOWLEDGE THEY DO NOT HAVE ANY IDEA WHAT THE PRIME

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MINISTER WILL DO NEXT BUT THE BETTING IS AGAINST ELECTIONS AND IN FAVOR OF FURTHER TIGHTENING OF THE POLITICAL REINS.
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